

## **RESOLUTION NO. 2010.66**

### **A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE ONE OR MORE GOVERNMENT PROPERTY LAND AND IMPROVEMENTS LEASES AND MEMORANDUMS OF LEASE FOR EACH GOVERNMENT PROPERTY IMPROVEMENT LOCATED WITHIN THE APACHE TRAILS PROJECT ON THE OCCURRENCE OF THE CONDITIONS SPECIFIED IN THIS RESOLUTION.**

WHEREAS, many areas within the City of Tempe, including those within the Central Business District established by the City Council, may incur increased costs due to unique development constraints and challenges associated with urban development; and

WHEREAS, such challenges and constraints may make development of such property economically feasible only if the City is able to provide such developments with the benefit of the eight-year statutorily-authorized property tax abatement and existing rates available as of May 20, 2010, pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209, inclusive (“Government Property Lease Excise Tax Abatement” or “GPLET”); and

WHEREAS, recent changes to the GPLET statutes will nullify the benefits that would otherwise be available; and

WHEREAS, the City and Cardinal Capital Management, Inc., an Arizona Corporation (“Developer”), are parties to a Development and Disposition Agreement dated February 7, 2008 and recorded September 3, 2008 as Document No. 2008-0764311, Official Records of Maricopa County, Arizona, as amended (the “Development Agreement”), with respect to the development of a project (the “Apache Trails Project”) on certain real property previously owned by the City and now owned by Developer and described in the Development Agreement (the “Property”); and

WHEREAS, Developer has represented to City that its ability to proceed expeditiously with construction of the Project has been jeopardized by the current economic situation, and that the Project may not be economically feasible unless the City retains the ability to provide Developer with statutorily-authorized property tax abatements and rates, including, without limitation, the abatements and rates currently available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209 and which City subsequently determines are necessary or appropriate for the project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That the Mayor is authorized to execute one or more Government Property Land and Improvements Leases (each, a “Lease”) and one or more Memorandums of Lease, with respect to all or any portion of the Property or the Project, each Lease to be substantially in the

forms of such documents on file with the City Clerk's office, and to take such further actions and execute such additional documents as are necessary to consummate each such Lease, at such time as the following specified conditions have been satisfied as to each such Lease:

1. The Lease may be entered only for a building on any portion of the Property (a) for which a certificate of occupancy has been issued, (b) for which title of record is held by the City of Tempe, (c) which is situated on land for which the City holds title of record, and (d) which is available for use for any commercial, residential rental or industrial purpose (including, but not limited to, office, retail, restaurant, service business, hotel, entertainment, recreational or parking uses), all within the meaning of A.R.S. § 42-6201; and

2. The City and the developer of the government property improvement which is the subject of the Lease shall have entered into a subordinate parcel development agreement or an amendment of the Development Agreement, containing a full and complete description of the project and government property improvement to be constructed, including without limitation, a definitive schedule of performance setting forth the dates by which such improvements must be completed, a finding that the tax benefits provided by the Lease are necessary and appropriate for the Project, and such other terms and conditions as Council may require and ultimately approve in its unfettered discretion; and

3. The development agreement or amendment shall provide for the payment of an annual in-lieu payment to the Tempe Union High School District and the Tempe Elementary School District No. 3 (the "School Districts"), during the abatement period in an amount equal to the lesser of: (a) that portion of the property tax which would have otherwise been payable by such portion of the Project but for the abatement and which would have been remitted to the School Districts, or (b) an amount to be agreed upon at the time of the execution of the development agreement or amendment, which amount, as applicable, shall be allocated equally to such School Districts; and

4. Each Lease is signed and the corresponding Memorandum recorded no later than the 10<sup>th</sup> anniversary of the date of this Resolution.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Hugh L. Hallman, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney